THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.1809 OF 2000

DATED: 27-04-2007

Between:

The Member Secretary, APSEB (now known as A.P. Transco Ltd) represented by its Chairman & Managing Director, Hyderabad and others

.. Petitioners

and

The Presiding Officer, Labour Court, Guntur and another.

.. Respondents

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ORDER:

This writ petition is filed seeking a certiorari to call for the records pertaining to award, dated 21.06.1999, passed in I.D.No.56 of 1997 on the file of the Labour Court, Guntur and to quash the same as arbitrary and illegal.

The petitioners are the management and the 2nd respondent is the workman. It appears, the 2nd respondent-workman was working as Lower Division Clerk under the control of the Assistant Accounts Officer, APSEB, Nuzividu. While so, he was placed under suspension with effect from 05.06.1986 without furnishing any reasons and without any approval from the 1st and 2nd petitioners herein. Thereafter, an enquiry was conducted into the irregularities and defalcation of Board's funds committed by K. Mrutyunjaya Rao, Assistant Accounts Officer and others involved in the case and ultimately the 2nd respondent was removed from service. Aggrieved by the same, the 2nd respondent raised a dispute under Section 2-A (2) of the Industrial Disputes Act (for short 'the Act').

It was the case of the 2nd respondent that during the suspension period, no subsistence allowance was paid to him, and, on account of the same, the enquiry is vitiated. Further, the enquiry was not properly conducted and even otherwise the punishment of removal from service is disproportionate to that of the misconduct alleged.

The management filed a detailed counter-affidavit denying the allegations made by the workman. It is stated that the workman is expected to maintain the records pertaining to his seat properly. Any omissions, corrections made in the said records or writing by others is the sole responsibility of the workman. Though the service of some other employees of the Electricity Revenue Office were spared for invigilation work of Intermediate Examinations during the period from 18.03.1986 to 03.04.1986, they used to attend the normal official duties in the afternoon as the invigilation work was only from 8.00 a.m. to 11.00 am. But, the delinquent has not attended the office during that period in spite of the instructions of the Assistant Accounts Officer and also being aware that the audit of the E.R.O's office was being done. When the workman was enthusiastic to attend the invigilation work, his health should not have prevented him to attend the office to hand over the relevant records for audit. After invigilation work, he proceeded on leave from 04.04.1986 to 02.05.1986 on health grounds. The workman was responsible for production of the records. The Senior Accounts Officer was appointed as Enquiry Officer to enquire into the irregularities and the defalcation of Board's funds by K.Mrutyunjaya Rao and others. The Enquiry Officer conducted enquiry and, basing on his report, the charges of misappropriation of Board's funds to a tune of Rs.1,846/- and other irregularities have been proved. The Judgment of the criminal Court does not bind the disciplinary proceedings. Therefore, the workman is not entitled for any relief.

No oral or documentary evidence was adduced on either side before the Labour Court. However, on the basis of the record made available, the Labour Court came to the conclusion that the enquiry was vitiated, since the management had admitted that no subsistence allowance was paid to the workman during the period of suspension and a departmental enquiry cannot be conducted without paying

subsistence allowance. Further, the criminal case and the departmental enquiry were proceeded with regard to same offence and, depending upon the same set of facts and evidence, the criminal Court held that the workman was not guilty of the offence and accordingly acquitted him. The Labour Court felt that the workman is entitled for reinstatement with continuity of service, but without any backwages and accordingly passed an award. Aggrieved by the same, the management preferred this writ petition.

It is the contention of the learned counsel for the petitioners that the enquiry was properly conducted and subsistence allowance was paid, and even if it is assumed that the subsistence allowance was not paid, on that ground alone, the enquiry cannot be held to be vitiated. The Labour Court, instead of deciding the matter on merits, has gone into certain technicalities and answered the dispute in favour of the workman, which is arbitrary and illegal. Merely the criminal case ended in acquittal, it cannot be said that the management cannot proceed with departmental proceedings and pass appropriate orders. Therefore, the award passed by the Labour Court is erroneous and is liable to be set aside.

Whereas the learned counsel for the 2nd respondent-workman supported the award passed by the Labour Court and submitted that the Labour Court has not committed any error calling for interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned award and other material made available on record.

The whole case of the petitioners-management is that the 2nd respondent allowed somebody to handle the registers, which were

supposed to be maintained by him; whereas it is the contention of the workman that he was sent for invigilation duty of Intermediate Examinations and he never attended the office during that period. Thus, the charge is that the 2nd respondent allowed somebody to handle the registers, which he was not supposed to do and this has resulted in defalcation of funds of the Board. There was no allegation that the 2nd respondent misappropriated certain funds or he had any such intention. Further, it appears, during the period of suspension, the 2nd respondent was not paid subsistence allowance. Under such circumstances, conducting an enquiry itself is illegal.

The learned counsel for the 2nd respondent further stated that as many as 18 employees, who were removed from service on the same charges, had approached this Court directly and this Court directed reinstatement of those employees.

In view of the above, I am of the opinion that the Labour Court has not committed any error calling for interference of this Court under Article 226 of the Constitution of India. The writ petition is devoid of merits and is liable to be dismissed.

The writ petition is accordingly dismissed. No costs.

C.V. RAMULU, J

27th April, 2007.
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